



**Carbon Sequestration Council**  
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September 9, 2013

Shaun L. McGrath  
Regional Administrator  
EPA Region 8  
1595 Wynkoop Street  
MSC 8P-W-UIC  
Denver, Colorado 80202

Re: North Dakota Underground Injection Control Program Revision Application  
Docket ID No. EPA-HQ-OW-2013-0280

Dear Administrator McGrath:

The Carbon Sequestration Council (CSC) is pleased to submit these comments on the complete program revision package from the State of North Dakota requesting approval of a revision to its section 1422 Underground Injection Control (UIC) program to include Class VI primacy. 78 Fed. Reg. 48639 (August 9, 2013). CSC is a multi-industry association formed to provide a forum for inter-industry communication around key issues of carbon capture and sequestration (CCS) including policy, funding, and messaging. CSC facilitates information sharing and consensus building to more effectively promote policies, legislation and regulatory frameworks that foster the use of anthropogenic CO<sub>2</sub> for enhanced oil recovery (EOR) as well as the early use and commercial deployment of geologic sequestration (GS) as a means of addressing greenhouse gas mitigation.

CSC commends EPA for the effort made to work with the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division (Commission) to accommodate the meshing of the existing North Dakota UIC statutory and regulatory framework for geologic sequestration of carbon dioxide streams with the Class VI UIC program. We consider it particularly important at this early stage in the implementation of the Class VI program – before the deployment of any commercial geologic sequestration projects – for states to be able to tailor their Class VI programs to “consider . . . varying geologic, hydrological, or historical conditions in different States and in different areas within a State” consistent with section 1421(b)(3)(A) of the Safe Drinking Water Act. 42 U.S.C. §300h(b)(3)(A). This is one area in particular where State UIC programs can provide extremely useful laboratories for the development and testing of regulatory approaches for the permitting of Class VI geologic sequestration projects and facilities.

We are very concerned, however, that some elements of the North Dakota program that were adopted solely for the purpose of meeting EPA’s requirement that the North Dakota program be

“at least as stringent as the corresponding [federal] provisions” under 40 CFR § 145.13(b)(1). The proper measure of stringency for a state program for the permitting of Class VI wells is whether the “the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources”. 42 U.S.C. § 300h(b)(1)(B)(i). In particular, EPA should not insist that a State disrupt its normal administrative procedures, to which regulated parties and members of the public have become accustomed over time, simply to adopt procedures that mirror the federal program. Accordingly, it should not have been necessary for the Commission to adopt all of the provisions included in NDAC §§43-05-01-07.2 and 43-05-01-08. Much more limited adjustments in the Commissions procedures should have been sufficient to satisfy any requirement for similar stringency. We urge EPA not to require all states applying for primacy to make similar wholesale adoptions of these federal administrative procedures.

Substantive provisions of the Class VI regulations adopted by States should also be judged by the same standard of requiring that provisions be sufficient to require that “the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources”.

There is language in the Memorandum of Agreement (MOA) between the Commission and EPA that should be removed. In ILC, “Conformance with Laws and Regulations”, the words “promulgated minimum requirements”<sup>1/</sup> should be deleted because these words add no additional meaning, and the ambiguity of the words will introduce potential confusion. It is sufficient to indicate that the Commission shall administer the Class VI program consistent with the SDWA and “State and federal laws and regulations”. Section 1421 of the SDWA requires EPA to promulgate in regulations the “minimum requirements for effective programs to prevent underground injection which endangers drinking water sources”. Accordingly, it is sufficient to reference “federal regulations”. Addition of language about “promulgated minimum requirements” only suggests that these could be something different from the regulations. In particular, it creates the notion that EPA could “promulgate” something that States could be required to follow without including those requirements in the UIC regulations promulgated as directed by the SDWA, something EPA lacks authority to do.

We urge EPA to revise the approach to eventual funding of Class VI that appears to be reflected in the MOA. While it is true that the lead agency of the North Dakota 1422 UIC program for Classes I, III, IV and V is the Department of Health (NDDH), the Commission administers the 1425 UIC program regulating Class II injection well activities in direct relationship with EPA, and the Commission receives a separate program grant from the EPA to administer the 1425 UIC program. The Commission has statutory authority to regulate Class VI injection well activities under North Dakota Century Code (NDCC) Chapter 38-22 and NDAC Chapter 43-05-01. EPA’s regulations expressly authorize states to “apply for primary enforcement responsibility for Class

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<sup>1/</sup> Class VI Underground Injection Control Program Memorandum Of Agreement Between North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division and The United States Environmental Protection Agency Region 8 at 2 (MOA).

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VI wells independently of other injection well classes". 40 C.F.R. § 145.1(i). Accordingly, in light of the existing direct relationship between EPA and the Commission, it makes far more sense to forward any grant funds directly to the Commission should federal funds become available for Class VI activities rather than sidetracking those funds through NDDH, with the unavoidable duplications of administrative processes that such a move would entail.

Thank you for the opportunity to comment on the program revision package from the State of North Dakota requesting approval of a revision to its section 1422 Underground Injection Control (UIC) program to include Class VI primacy. We urge EPA to approve the application and grant primacy to the NDIC to implement the UIC Class VI program in North Dakota. If you have any questions or need any additional information about these comments, please contact me at 202-508-6014 or [bob.vanvoorhees@gmail.com](mailto:bob.vanvoorhees@gmail.com).

Respectfully submitted,



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